

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re: _____) Chapter 11
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
 Debtor.)
_____)

**TRUSTEE'S MOTION TO APPROVE COMPROMISE AND SETTLEMENT WITH
INTRUST BANK, N.A.**

James A. Knauer, as Chapter 11 Trustee ("Trustee") for the estate ("Estate") of Eastern Livestock Co., LLC ("Debtor"), by counsel, respectfully moves this Court for an Order approving a proposed settlement with Intrust Bank, N.A. ("Intrust") pursuant to Federal Rule of Bankruptcy Procedure 9019. In support of this motion, the Trustee says:

BACKGROUND & JURISDICTION

1. Certain petitioning creditors commenced the above-captioned chapter 11 case ("Chapter 11 Case") against Debtor on December 6, 2010 by filing an involuntary petition for relief under Chapter 11 of Title 11 of the United States Code. This Court entered an *Order For Relief in An Involuntary Case and Order to Complete Filing* [Dkt. No. 110] on December 28, 2010. On December 27, 2010, the Court entered an *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Dkt. No. 102] pursuant to 11 U.S.C. § 1104.

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are 11 U.S.C. § 105(a) and FED. R. BANKR. P. 9019.

3. The Trustee filed the *Trustee's Chapter 11 Plan of Liquidation* on July 23, 2012 [Docket No. 1255] and the *First Amended Chapter 11 Plan of Liquidation* on October 26, 2012

[Docket No. 1490] (“Plan”). The Court entered an Order on December 17, 2012 [Docket No. 1644] (“Confirmation Order”) confirming the Plan.

SETTLEMENT

4. On December 22, 2012, the Trustee commenced adversary proceeding No. 12-59149 (the “Adversary”) against Intrust. On February 6, 2013 and September 17, 2013, the Trustee amended his complaint. By the Adversary, the Trustee sought to avoid and recover from Intrust under federal and state avoidance law almost \$2,000,000 in transfers made by Debtor to Thomas P. Gibson prior to the filing of the Chapter 11 Case. Intrust has denied all liability.

5. Intrust filed a proof of claim (the “Intrust ELC Claim”) in the Chapter 11 Case. The Intrust ELC Claim is designated on the official claims register maintained by The BMC Group, Inc. as claim no. 312 and asserts a secured claim totaling \$9,029,203.24. The Trustee filed an objection (the “Objection”) to the Intrust ELC Claim. Intrust also filed a proof of claim (the “Intrust Gibson Claim”) in the Chapter 7 case of Thomas P. Gibson and Patsy M. Gibson (the “Gibson Case”). The Intrust Gibson Claim is designated on the Court’s claims register for the Gibson Case as claim no. 14 and asserts an unsecured claim totaling \$8,952,274.44. Kathryn L. Pry, as Chapter 7 trustee in the Gibson Case, filed an objection to the Intrust Gibson Claim (the “Gibson Objection”).

6. The Trustee and Intrust desire to resolve and settle all issues, disputes, claims, and causes of action between them without resorting to further litigation. Without admission of any fault or liability and, as a result of good faith settlement negotiations, they have agreed to settle and resolve all such issues, disputes, claims and causes of action as summarized below and more fully set forth in the Settlement Agreement, a true and accurate copy of which is attached hereto as Exhibit A.

7. As more particularly described in the Settlement Agreement, Intrust has agreed to (i) assign, transfer and convey to the Trustee, without recourse, all of Intrust's rights in and to the first \$100,000 of distributions made on account of the Allowed Intrust Gibson Claim and (ii) waive and release the Intrust ELC Claim. Within five (5) business days following the Effective Date (as that term is defined in the Settlement Agreement), (i) the Parties shall file with the Court a stipulation dismissing the Adversary with prejudice and (ii) Intrust shall file with the Court a withdrawal of the Intrust ELC Claim. The Trustee shall thereafter withdraw the Objection. Intrust and the Trustee will also mutually release each other (and each other's officers, directors, employees, shareholders, attorneys, insurers, agents and affiliates, predecessors, successors, past, present and future parents, subsidiaries, assigns and heirs) from all claims or causes of action known or unknown, direct or indirect, related to the Chapter 11 Case.

8. As a result of the Settlement Agreement, claims against the Estate will be reduced by more than \$9,000,000 and the Trustee expects to recover \$100,000 in cash. The Settlement Agreement will also resolve contentious litigation.

9. The proposed Settlement will be effective upon the entry of a final, non-appealable order approving the Settlement.

10. In the Trustee's professional judgment the proposed compromise as set forth in Exhibit A is in the best interest of the Estate and its creditors.

11. In accordance with the terms of the Plan, all amounts received by the Trustee under this Settlement Agreement shall be designated and become part of the Recovery Fund (as those terms are defined in the Plan).

BRIEF IN SUPPORT

A. The Settlement Is Fair and in the Best Interests of the Debtors' Estates and Should Be Authorized Pursuant to Bankruptcy Rule 9019(a).

12. Bankruptcy Rule 9019(a) authorizes a bankruptcy court, on motion by a trustee and after appropriate notice and a hearing, to approve a compromise or settlement so long as the proposed compromise or settlement is fair and equitable and in the best interest of the estate. See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994) ("In conducting a hearing under Rule 9019(a), the bankruptcy court is to determine whether the proposed compromise is fair and equitable and in the best interests of the bankruptcy estate.") (internal citations omitted); In re Andreuccetti, 975 F.2d 413, 421 (7th Cir. 1992) (Bankruptcy Rule 9019(a) authorizes the court to approve a settlement if "the settlement is in the best interests of the estate."); In re Energy Co-op, Inc., 886 F.2d 921, 927 (7th Cir. 1989) ("[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate.").

13. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. See Fogel v. Zell, 221 F.3d 955, 960 (7th Cir. 2000) ("Judges naturally prefer to settle complex litigation than to see it litigated to the hilt, especially when it is litigation in a bankruptcy proceeding — the expenses of administering the bankruptcy often consume most or even all of the bankrupt's assets."); In re Martin, 91 F.3d 389, 393 (3d Cir. 1996) ("To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy").

14. It is well-settled that a proposed settlement need not be the best result that the debtor could have achieved, but only must fall “within the reasonable range of litigation possibilities.” Energy Co-op, 886 F.2d at 929.

15. As further guidance, the Seventh Circuit has offered the following guidelines:

Central to the bankruptcy judge’s determination is a comparison of the settlement’s terms with the litigation’s probable costs and probable benefits. Among the factors the bankruptcy judge should consider in [the] analysis are the litigation’s probability of success, the litigation’s complexity, and the litigation’s attendant expense, inconvenience, and delay.

LaSalle Nat’l Bank v. Holland (In re Am. Reserve Corp.), 841 F.2d 159, 161 (7th Cir. 1987) (citations omitted).

16. The Settlement Agreement, negotiated at arm’s length and in good faith, achieves a result that is in the best interest of the Debtor and its Estate. The settlement also accomplishes the withdrawal of the Intrust ELC Claim in this Chapter 11 Case at no further cost to the Estate or its creditors.

17. By the Adversary, the Trustee seeks to recover almost \$2,000,000 from Intrust pursuant to 11 U.S.C. § 550. The Trustee’s claims involve complicated questions of tracing as well as potential defenses available to Intrust under 11 U.S.C. § 550(b)(1). The Trustee believes that the proposed settlement properly accounts for the costs of continued litigation and the likelihood of success on his claims, and falls squarely within the range of potential litigation outcomes.

18. For these reasons, the Settlement Agreement should be approved pursuant to Bankruptcy Rule 9019.

NOTICE

19. The Trustee will provide notice of this Motion pursuant to FED. R. BANK. P. 2002(a)(3) or as otherwise directed by this Court. The Notice shall include a definitive time in

which any party will be required to file and serve an objection stating with specificity its objection.

CONCLUSION

For the foregoing reasons, the Trustee respectfully request that this Court enter an order approving the Settlement Agreement, as it is in the best interests of the Estate and its creditors.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2015, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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